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PREVENTION OF DISCRIMINATION

The rights of non-citizens

Progress report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decisions 2000/103 and 2001/108, as well as Commission decision 2002/107

Addendum

Examples of practices in regard to non-citizens

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I. INTRODUCTION

1. This addendum (E/CN.4/Sub.2/2002/25/Add.3) to the progress report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2002/25) contains media and NGO reports that provide examples of State practices in regard to non-citizens.

2. The materials included in this addendum were compiled by searching various newspaper and wire service databases, Westlaw's Major World Newspapers, Major Papers, and Major Magazines databases; Lexis's INTNEWS database; CONTENTSFIRST, Political Science Abstracts, SCAD, Minority Rights Group International materials, Ethnic News Watch, World Reporter, World News Connection (FBIS), Japan Today web site, and the *New York Times* archives. A general World Wide Web search was also conducted. Each of these databases contains solely English-language publications that serve a general interest readership. A large number of search terms were used, alone and in various combinations. These terms included: foreigner, national, alien, non-native, non-domestic, migrant, newcomer, asylum-seeker, refugee, immigrant, non-citizen, banished, expelled, exiled, and imprisoned alien.

3. While the main progress report (E/CN.4/Sub.2/2002/25) summarizes the norms that protect the rights of non-citizens, in many countries non-citizens do not actually enjoy those rights. Many of the most difficult problems relate to undocumented individuals whose very existence may not be recognized by the State.[1] They may be homeless or live in irregular and/or often changeable locations under substandard conditions. Undocumented migrants may be subject to identification checks, raids upon their homes and workplaces, and interrogations in which they may suffer abuse, excessive use of force, inhumane or degrading treatment, physical and psychological abuse, and violation of the right to privacy. Their encounters with the police may not be noticed because they have no relatives to raise questions about their detention or even death. Even when they suffer human rights violations, they may not seek judicial remedies because they fear deportation. Without documentation they often cannot obtain basic government services, including health care and in some cases education. If they can find work, they are often employed in the informal economy in which their employers exploit their fear of being reported to the authorities and may subject them to slavery-like conditions. If the irregular migrants are employed as domestic servants, they may be subjected to sexual and other physical abuse. Employers often do not keep records of their wages or their hours. Few, if any, official records are kept and media reports do not reflect the realities they face. Accordingly, the problems of these undocumented individuals are generally not presented in this report. Indeed, although Governments may find some of the reports unflattering, that the situations are reported reflects that attention is being paid to the problems facing non-citizens. At least in these situations the media, and often the Government, are attending to the problems. Where there are no reports, there may be even worse problems and greater indifference.

4. Another extremely vulnerable group of non-citizens are irregular migrants. The United Nations Special Rapporteur on the human rights of migrants has begun to report on their situation.[2] When non-citizens leave their countries for migration they can either travel through irregular or regular channels. When using irregular channels migrants take enormous risks by putting their lives in the hands of smuggling and trafficking networks. For example, smugglers may use unsafe means of transportation that jeopardize the lives of the migrants. Migrants may

die by suffocation in closed containers or by drowning when an overloaded ship sinks. In some cases State officials may be aware of or even involved in the smuggling efforts. When migrants travel in these conditions they are often intercepted by State agents who use their power to return or detain migrants or, in some cases, to extort bribes from them. There have been cases in which sexual favours have been demanded of undocumented women migrants in order to let them continue on their way; cases of rape have also been reported in some countries. Having been intercepted, migrants are also vulnerable to excessive use of force by security forces as well as mental and physical abuse, particularly due to racist or xenophobic attitudes. Irregular migrants are subject to degrading body searches. Migrants also report confiscation and theft of documents, money and belongings. When interception leads to detention many countries lack appropriate facilities and migrants are often detained with convicted criminals. Detained migrants may lack access to the courts because their detention is considered administrative and thus means of judicial review is not available. Detention may also be indefinite because it may take several months or far longer to identify the individuals and ascertain their nationality. The country of origin may be unwilling to recognize the individuals as their nationals or to produce travel documents. Even if the country of origin acknowledges their nationals in detention, many migrants are imprisoned in places where there is no consular representation of their country of origin, therefore consular protection may not be available. Where there is a consular office effective protection may depend on the country of origin's policies and willingness to act on behalf of their nationals. In addition, many countries have penal codes that make it a serious criminal offence (for example, 1 to 5 years' imprisonment) to enter a country with or to possess false documents. Some migrants are accused of being traffickers or smugglers, although they may only be the victims of those offences. When migrants are involuntarily deported, they may be subjected to excessive use of force, use of drugs, and degrading treatment.

5. Because of methodological constraints - linguistic and otherwise - it is not possible to present in this addendum a comprehensive, representative, timely, or even fully reliable account of the problems facing non-citizens around the world. Nonetheless, members of the Sub-Commission asked the Special Rapporteur to present some examples of the situations facing non-citizens, so as to assess whether the principles of international human rights law set forth in the progress report are being respected in practice and to determine whether further norms and procedures are required. The materials collected below are offered as a very tentative effort to respond to those requests in the hope that Governments, non-governmental organizations and all other readers will be encouraged to provide updates and corrections on the situations discussed below, so that greater accuracy can be achieved in the Special Rapporteur's final report in 2003. The paragraphs and/or the cited sources indicate the dates of the situations identified. Hence, the paragraphs below should be considered a snapshot of the situation as of those dates and as reported by the media. It is recognized that media reports are not always accurate and it is very likely that updates and contextual information would provide a greater understanding of the situations. Because the Special Rapporteur principally consulted English-language media, many of the reports come from English-speaking countries. It should not be inferred that problems of non-citizens are somehow concentrated in those English-speaking countries. Rather, the Special Rapporteur needs to consult media and other sources representing other languages and other countries. Governments, non-governmental organizations and others are encouraged to bring to the attention of the Special Rapporteur further situations, so as to provide a more representative sample of the problems facing non-citizens.

II. FREEDOM FROM CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

6. World News Connection reported in July 2001 that the European Commission against Racism and Intolerance (ECRI) found that excessive force by the police against aliens who enter or stay in Cyprus illegally is a matter of serious concern. Cyprus has responded by setting up a ministerial committee to submit recommendations aimed at improving the situation.[3]

7. An assault on three illegal immigrants by police, captured on videotape, has highlighted the brutal treatment of foreigners in South Africa. Over 14,000 of 128,000 police on the South African force are facing criminal prosecution for their excessive brutality.[4]

8. Malaysia is host to about 700,000 legal foreign workers, most of whom are Indonesians and Bangladeshis. Officials estimate that there are 250,000 illegal foreign workers in the country, though others say the actual figure could be much higher.[5] A former illegal immigrant from Bangladesh gave disturbing testimony in a Malaysian courtroom about alleged torture and sexual abuse five years ago at a detention camp for illegal immigrants.[6] He testified that 120 detainees were allegedly ordered to perform sex acts on each other as about half a dozen police personnel watched and that detainees were forced to eat grass and spend extended periods of time in cells covered with faeces.

9. Human Rights Watch (HRW) has reported that more than 60 per cent of illegal or undocumented immigrants detained by the United States Immigration and Naturalization Service (INS) were housed in local jails where conditions and treatment of inmates fell short of international standards. In many cases, immigrants, including asylum-seekers, were kept with convicted criminals in these facilities and sometimes had been subjected to physical abuse and ill-treatment, HRW said in an 84-page report called "Locked Away". The INS Commissioner during the Clinton Administration stressed in a statement that her agency was "deeply committed to providing a safe, secure and humane environment for all detainees, regardless of where they are being held". Many are arrested at their port of entry into the United States for improper documentation, while others have been picked up by the United States Border Patrol or by INS agents after raids on workplaces. Still others have been convicted for felony crimes in the United States and are awaiting deportation to their homelands as required by United States law. There were about 16,000 INS detainees scattered around the country, only 40 per cent of whom are being held in INS holding facilities. The rest are transferred to local jails or privately owned facilities used by local jurisdictions.

10. Of these, almost 60 per cent face deportation for criminal offences, and another 35 per cent or more were picked up for lack of documentation. The report's author, Jennifer Bailey, said she estimated the percentage of asylum-seekers to be between 5 and 7 per cent. The INS itself does not differentiate between asylum-seekers and other non-criminal immigrants in detention.[7]

11. Starting in April 1999, the FBI was investigating serious allegations of beatings, verbal abuse and other violations of the civil rights of asylum-seekers at the federal Elizabeth Detention Center in the United States. Four years earlier there was a riot in the detention centre over

inhumane treatment of the detainees. The Justice Department called in the FBI after reports that guards beat a Palestinian stowaway so badly that he required stitches and that two officers kicked and shoved a Nigerian college student. Immigration officials have asked investigators to look into a possible cover-up that may include the withholding of information and tampering with videotapes of the incidents. The allegations triggered a dramatic shake-up, the chief of security was removed, two supervisors and six officers were barred from going near detainees, and a guard was fired for refusing to cooperate with an internal investigation into the charges and the warden in charge of the centre during the investigated incidents resigned. INS officials were very concerned about all the reported cases of mistreatment and took steps to help alleviate the problems including increasing the number of INS officers in the centre from one to seven, and by having the centre install more video and other monitoring equipment. Detention critics still say that these measures are not enough and that the Government should only hold asylum-seekers as a last resort. Many detainees in the centre stay from 90 days to over two years in the jail-like centre while their cases are processed.[8]

12. Australian Immigration Minister Philip Ruddock has ordered a probe into the treatment of illegal aliens. The Australian Broadcasting Corporation's "Four Corners" claimed on 13 March 2000, that illegal immigrants had been repeatedly injected against their will with sedatives. This practice reportedly occurred as the aliens were being deported. "Four Corners" also told of a pregnant woman complaining to Immigration officials for a fortnight about pain and bleeding. When finally admitted to hospital, she was found to have miscarried. A spokesman for Ruddock confirmed that a departmental investigation had started into the programme's content.[9]

13. In September 1999, Mozambican nationals reported cases of murder, intimidation and assault at the hands of South African policemen at the Mozambican Consulate in Johannesburg. Carlo Bila, chairperson of the Mozambican community organization in Bekkersdal township on the West Rand, said he had received complaints of illegal immigrants dying during arrest operations, with some being assaulted, robbed and thrown off trains while being deported. Antonio Tauzene, a consular official, confirmed that the Consulate had received reports about brutal treatment of illegal immigrants, but believed most cases went unreported.[10]

14. In early March 2000, the South African Human Rights Commission (SAHRC) said it was "reasonably satisfied" with the conditions in which illegal immigrants were being detained at the Lindela transit camp near Krugersdorp on the West Rand, but it was still concerned about allegations of human rights abuses by police officers.[11]

15. South African Human Rights Commission (SAHRC) commissioner Jody Kollapen, together with SAHRC Chairman Barney Pityana and other commissioners, visited the camp to monitor the conditions and investigate allegations of irregularities relating to arrests. "We are seriously concerned about the large number of immigrants who were arrested and then released. It is a violation of rights to be detained even though they have legal documents", said Kollapen. As a result of the unwarranted arrests, Pityana said Lindela's inadequate facilities (it has a maximum capacity of 2,000) could not cope with the influx of more than 3,000 detainees. Pityana said there was a thin line between legitimate police action against illegal immigrants and the treatment of asylum-seekers who were not afforded the rights they deserve.[12]

16. Watchdog groups in Japan have submitted a report to the Human Rights Committee established pursuant to the International Covenant on Civil and Political Rights that points out the growing number of cases in which foreigners have allegedly been subjected to abuse, including violence, while in custody. The report includes five instances of suspected abuse of foreign detainees in prison, detention houses and immigration holding facilities between 1994 and 1998. Activists hope the report will trigger improvements in Japan's detention system.[13]

17. Cardinal Thomas Winning made an impassioned plea for fair treatment for refugees and asylum-seekers just days before his death. Writing in *The Herald* one week before his first heart attack, the cardinal said the intolerance and prejudice shown towards some refugees in Glasgow, Scotland, had come close to making him ashamed of his home city. He said: "The face of our city has been disfigured by brutal acts of aggression against people whose only crime is to flee persecution and seek refuge in a foreign country. As archbishop of Glasgow, I feel duty bound to denounce the violence, intimidation, and bullying of asylum-seekers in our midst. More importantly, as a human being, I feel utterly dismayed to think that such activities can be happening a few miles from our revitalized city centre."

18. Cardinal Winning said the Church also condemned the "institutionalized discrimination" suffered by asylum-seekers. "Despite the problems, I remain hopeful", he said. "My hope is Glasgow can overcome this distasteful and shameful blip on the path to a more caring society."[14]

19. In the 13 months since Glasgow stretched out its arms to asylum-seekers there have been 70 reported racist incidents in the Sighthill area where 2,000 are housed. Two Palestinian brothers were attacked by a mob in April 2001. "There is a barbaric regime in Afghanistan", Mohammad Asif said. "I left my country to save my life and I come here and end up in another barbaric place." Home Secretary Jack Straw announced new measures to speed up the removal of unsuccessful asylum-seekers from Britain after admitting that the Government had failed to meet its target of deporting 12,000 people who were refused refugee status last year. Although only 9,000 were sent back, Straw unveiled a raft of fresh proposals to tackle the year's target of 30,000 including the increased use of charter planes and the introduction of mobile fingerprint units to check on potential absconders. The Scottish Refugee Council has a different view of the situation. It says that it is appalled by the growing number of racist attacks on asylum-seekers and believes the number of reported cases to be "just the tip of the iceberg". Many asylum-seekers, the organization says, are experiencing discrimination and abuse on a daily basis. In Sighthill, a place blighted by alcoholism, drug addiction, crime, unemployment and boredom, this is the grim reality for many of the 2,000 Kurds, Iraqis, Afghans and others already there. Norrie Fowler has lived in Sighthill for eight years. He puts the blame of the troubles squarely at the door of Glasgow City Council. "They have let down the residents and they have let down the asylum-seekers", he says. "Right from the very beginning they got it wrong, they haven't educated or kept any of the local population informed. The first time that people knew that asylum-seekers were coming here was when they read it in the press."[15]

20. The latest Scottish police figures, which cover the nine-month period from April 2000 to January 2001, show there have been 67 reported incidents involving attacks or abuse against asylum-seekers, and the figures are continuing to rise. A total of 98 people have been identified as responsible, of whom 50 were under 16 years of age, 34 were aged 16-21 and 11 were aged 22 to 30, with only three older than 30.[16]

III. FREEDOM FROM ARBITRARY DETENTION

21. The SAHRC says that police and Home Affairs Department officials are not only detaining aliens illegally but also seem to be targeting and discriminating against specific South African tribes, especially Vendas, Pedis and Shangaans from the Northern Province.[17]

22. A study conducted at the Lindela repatriation centre in Randfontein, South Africa, found that people were being detained on suspicion of being aliens simply because of the colour of their skins and their accents. Of 149 persons interviewed, 10 per cent were released because they were either South African citizens or legal residents, 15 per cent possessed valid identity documents, 30 per cent were not given a chance to prove their status, 20 per cent had been assaulted and 75 per cent were not informed of their right to make a phone call. The study also found numerous cases of other types of ill-treatment. In light of this study the Commission has called for the application of clear constitutional guidelines for the arrest of people suspected of being illegal immigrants.[18] The SAHRC has reported that hatred for foreigners has resulted in the deaths of 30 refugees and asylum-seekers. Non-citizen residents also reportedly suffer extortion, arbitrary arrest and general violent individual attacks.[19]

23. In 1996, xenophobic sentiment in the United States Congress produced laws giving the Government more authority in detaining and deporting non-citizens without judicial review. Some of the starkest examples of this trend involved anti-terrorism cases in which the federal Government has sought to deport illegal immigrants based on classified evidence that neither the defendants, their lawyers, nor even judges could review in full. While helping to write the regulations for implementing the tough new laws at the INS, Professor David Martin of the University of Virginia Law School said that he had tried to keep one principle in mind: the constitutional guarantee not to "deprive" anyone of due process. "The question is how do you figure out the balance between protecting the interests of the United States and the interests of the individual", he said.[20]

IV. FREEDOM OF MOVEMENT

24. The Czech Human Rights Council, a governmental body, has asked the Government to make amendments to the new laws on entry and stay of foreigners in the Czech Republic. Human Rights Commissioner Petr Uhl said that the Council has found that border police are not respecting treaties on the prevention of double taxation and agreements on rights of children. The Council has also recommended that the Government reassess its visa policies and the effectiveness of requiring citizens of certain countries to fill out entry forms.[21]

25. Following several years of feuding between the Czech Republic and former Soviet Republics over immigration practices, Prague has said it will introduce visa requirements for visitors from Russia, Ukraine and Belarus. The Czech decision was announced on 2 February 2000.[22]

26. The adoption of a new rule requiring non-citizens to carry an "A-Card" has created much controversy in Austria. This card, which is supposedly meant to be a tuberculosis check of foreign children and a special identity card for foreigners except EU citizens and tourists, is said to be a new way to continue old forms of racism in Austria.[23]

27. Some Zambian policy makers are calling for a tightening of immigration laws to control the massive flow of refugees and immigrants in recent years. Zambia has traditionally had a very open policy in regard to non-citizens' settlement within its borders.

28. In February 2000, the British Home Office announced it would impose bonds on some visitors from the Indian subcontinent. Visitors suspected of intending to immigrate will have to put up a bond of $A 40,000 prior to entering the country. The bond will only be returned if the person leaves the country on or before their official departure date, or if there were "exceptional medical circumstances" surrounding the overstay.[24]

V. DISCRIMINATION AND OTHER PROBLEMS IN THE ISSUANCE OF VISAS AND RESIDENCE PERMITS

29. On 22 August 2001, British immigration officers were given permission by the Czech Government to resume the controversial practice of screening Britain-bound flights for asylum-seekers at Prague airport. The Home Office had abandoned the pre-clearance immigration control system in July 2001 after it provoked an outcry in the Czech Republic.[25]

30. The Czech Republic plans to adopt stricter work rules and visa requirements for non-citizens while also substantially strengthening the Alien and Border Police. Deputy Interior Minister Jaroslav Kopriva has requested 120 new border police and 60 more Alien and Border Police officers in addition to the 1,300 new officers the Alien and Border Police have hired within the last year. In 1998 police set a new all-time high by catching 44,672 illegal immigrants.[26]

31. Some Canadian immigration lawyers, social workers and politicians say that Canada should create amnesty programmes for the over 200,000 illegal immigrants present there. Canada already accepts more immigrants per capita than any other Western nation. In 2000, more than 226,000 legitimate immigrants were allowed into Canada. Some critics say that an amnesty would only encourage more illegal immigrants to come to Canada while others state that immigrants are an invaluable asset to the national economy.[27]

32. An amendment to the Japanese Alien Registration Law recently abolished a fingerprint requirement to which all non-citizens had been subject. The revision of the law relieved about 600,000 residents from having to register their fingerprints. Instead, they will be asked to file their signatures or the names of their family members. Although the fingerprint law has been repealed, foreigners are still required to carry their alien registration cards at all times and violators face heavy penalties including incarceration for up to three years or fines of up to 300,000 yen. This requirement has been widely condemned abroad.[28] Some local communities have responded by creating local autonomy laws, which allow non-citizens more rights, for example, allowing non-citizens to serve in local governmental positions and to vote in local elections.[29]

VI. RIGHT TO WORK

33. China's Vice-Premier, Li Lanqing, said in a meeting with representatives of chambers of commerce that the Government is giving serious consideration to extending the existing time limits for the extension of visas of foreign workers. The representatives, including those of 16 foreign chambers of commerce in Hong Kong, had suggested that the current six-month limit on visa extensions is too short; it would be better for the Chinese Government to extend the period to three to five years. They also requested whether foreigners with permanent resident status in Hong Kong could enter the mainland without visas, requiring only the same document as was required for permanent residents of Hong Kong.[30]

34. Officials from the Ministry of Labour estimate that there are some 290,000 foreign workers in the Republic of Korea, 195,000 of whom are thought to be working illegally. Of these, over 50 per cent were from China, while Bangladeshis (8 per cent), Mongolians (7 per cent), Filipinos (6.7 per cent), and Thais (6.6 per cent) account for the majority of the remainder. The Korean media have focused mainly on "Western-looking" foreigners, perhaps adding to the perception that all foreigners working in Korea are successful and earning a great deal of money. However, the reality for most foreign workers is very different. "The working conditions for most migrant workers are very poor", says Father Kim Eunkyu of the International Workers Counselling Office in Goyang City. "Many of them are subject to verbal abuse, violence and racism and most Koreans look down on them." The counselling office was established last year with the goal of providing medical care to, and promoting basic human rights of foreign workers in Korea, many of whom are working illegally. The Government's Industrial Trainee System, a programme aimed at enticing foreign labour into "3D" (difficult, dangerous and dirty) jobs, has been roundly criticized by civic groups for making it easier for migrant workers' rights to be abused by unscrupulous businessmen. Cramped living conditions, intimidating workplace environments and low salaries (which are often withheld) often await the migrant worker who enters the country on the trainee system, with recent figures suggesting that at least 30 per cent of the foreign workforce participate in traineeships. With the results of a Korea Labour Institute survey indicating that an incredible 85 per cent of those entering the country as trainees abscond from their positions in search of better treatment, the nation's growing illegal worker problem seems destined to continue.[31]

35. In New Zealand, discrimination is stopping talented non-citizens from getting jobs, an Equal Employment Opportunities Trust study shows. The study, published on 16 November 1999, shows that even when they do get work, non-citizens are not always treated fairly. Trudie McNaughton, Executive Director of the Trust, said that talent was being wasted. A Trust survey of Sri Lankan migrants found that despite 96 per cent being qualified, 75 per cent having professional experience before moving to New Zealand and 92 per cent being fluent in English, more than half had taken up lower positions than they had previously held and almost half were discriminated against during their job search and afterward. Employers were the group most likely to discriminate, followed by recruitment consultants.[32]

36. Foreign nationals who do not have a residence permit in the Czech Republic are allowed to work for a maximum of three years in a row as of 1 October 1999. After this period expires, they must wait for a minimum of 12 months for the issuance of a new work permit. This law

does not apply to foreigners from EU member States, the United States, Canada, Australia and Japan. This law also does not apply to citizens of neighbouring States who return at least once a week to the place of their permanent residence and maintain the following jobs: seasonal workers, interns, teachers, university staff, family members of diplomats, members of rescue teams and accredited media representatives.[33]

37. Starting in early 1998 the Government of Indonesia was taking steps to protect the rights of women and other migrant workers overseas. The Government's efforts included a computerized system to monitor the mobility of women overseas and an intensification of their training. Problems commonly faced by those workers included bad treatment by employers, including violent conduct and rape; lack of understanding of sociocultural norms in the receiving countries; and lack of command of the language.[34]

38. Four hundred and fifty of the 1,500 non-citizen foreign language lecturers in Italy are claiming that they have been maltreated by Italian university authorities for up to 18 years. These foreign lecturers and professors are claiming that they receive inferior contracts and are subject to racial discrimination, financial exploitation, psychological harassment and general intimidation. There are many cases currently pending in court.[35]

39. It has been reported that female domestic workers in Saudi Arabia suffer from discrimination as foreign nationals and as women. They are excluded from the protections afforded to other workers by the Labour Code. As a result, they are frequently overworked and rarely given time off and are often locked in the homes of their employers. Their isolation makes them even more vulnerable to assaults which will not be witnessed by anyone outside the family of their employers, as well as being an easy target for false allegations.[36]

VII. THE TREATMENT OF REFUGEES AND ASYLUM-SEEKERS

40. In June 2000 a group of asylum-seekers in Glasgow, Scotland, complained that a building run by the YMCA was worse than a detention centre and petitioned the Scottish parliament for better treatment. The group cited inadequate food, lack of safety, and a rule that banned them from receiving guests as their main complaints. Positive Action in Housing, the Glasgow ethnic minorities housing agency, backed the group's action. Director Robina Qureshi believes the ban on asylum-seekers from bringing friends back is "blatantly discriminatory".[37]

41. Jobless asylum-seekers, who have recently been allowed to seek work in Ireland, are facing the threat of having their State benefit cut unless they prove they are genuinely looking for a job. However, unlike Irish nationals or people with refugee status, asylum-seekers are not entitled to training or State-funded language classes to help them prepare to join the labour force. Some 2,000 asylum-seekers who are currently eligible to work are being told they must supply documentary evidence that they are "genuinely seeking" a job.[38]

42. The Asylum Rights Alliance (ARA) started a campaign in 1998 to get the Irish Government to allow asylum-seekers to work in Ireland while their applications were being processed. The campaign was endorsed by more than 100 organizations, including the Irish Congress of Trade Unions and the National Organization of the Unemployed. The Government was accused by ARA of forcing asylum-seekers into a dependency culture.[39]

43. In April 2000, more than 400 individual lawyers, trade union members and refugee group members united to fight the Irish Government's policy of "direct provision" and dispersion of asylum-seekers. Under direct provision, asylum-seekers get full board accommodation and an allowance of 15 pounds a week instead of the regular living allowance of 72 pounds and rent allowance. In addition, large numbers of asylum-seekers have been dispersed to different parts of the State because of the shortage of accommodation in Dublin.[40]

44. A study conducted in September 2000 by the Department of Social, Community and Family Affairs in the United Kingdom said that of 3,536 asylum-seekers eligible to work, half are no longer claiming social welfare payments. Of the remainder, 646 are on supplementary welfare, which means they are either not available or do not want to work. Only 953, about one in four, are still on unemployment assistance.[41]

45. Assisting Chechen refugees and protecting their rights are the major aims of the newly established Committee of Chechen Refugees in Azerbaijan, said Firudin Abbasov, head of the Committee. He said that the Committee intended to obtain refugee status for the estimated 7,000 Chechens living in Azerbaijan. Not having this status, Chechens cannot get international humanitarian aid. They have not received any assistance over the past three or four months and are in "a catastrophic situation". Moreover, Chechens were subject to harassment by the police who demanded bribes.[42]

VIII. FREEDOM FROM ARBITRARY EXPULSION AND DEPORTATION

46. Thousands of legal permanent residents are facing the prospect of deportation as a result of changes in the Anti-Terrorism Act and Effective Death Penalty Act and the Illegal Immigrant Reform Act and Immigrant Responsibility Act enacted by the United States Congress in 1996. Nicholas DeMarzio, chair of the U.S. Catholic Conference on Migration, said that the new rules "undermine basic human dignity and human rights, unnecessarily separate and divide families, violate fundamental notions of fairness and equal protection under the law and create an artificial 'crisis' in [the ability of the INS to detain] truly violent or dangerous individuals". Under terms of this legislation, any crime committed by a legal permanent resident that earns a sentence of one year or more is classified as an aggravated felony, making the permanent resident eligible for deportation.[43]

47. The Czech Republic's Interior Minister, Vaclav Grulich, announced a plan for the removal of unwanted non-citizens. The proposal calls for sending Ukrainians and other foreigners who reside illegally in the Czech Republic back to their countries in sealed trains under police escort. "The trains will start rolling once the competent ministries work out the details of the new plan", said Interior Ministry spokeswoman Marie Masarikova, adding that the plan "should be implemented during the course of 2000". Any forced removal of illegal aliens would appear to be sanctioned under the tough new foreigners' law, which makes it much harder for "problem country" nationals, such as Ukrainians and Russians, to enter the country. Under the new law, passed in part to meet European Union standards, they must now provide photographs, proof of health insurance, proof of accommodation and funds for their stay to cross Czech borders. The new rules have created massive border delays. Human rights officials criticized Grulich's plan and branded the new foreigners' law as discriminatory. "The new

repressive measures will only send these people deeper into the arms of the Mafia", said Dana Nemcova, a caseworker for refugee services for the Czech Helsinki Committee, a humanitarian organization.[44]

48. In November 1999, soldiers rounded up and trucked 240 Haitians out of the Dominican Republic in a deportation that Haitians called an illegal response to recent international criticism of the Dominican treatment of Haitian immigrants. Tensions over Haitian immigration to the Dominican Republic have been high since the Organization of American States (OAS) issued a report on 30 October 1999, charging that the Dominican Republic had violated human rights by not granting citizenship to children born in the Dominican Republic if their parents are illegal Haitian immigrants.[45]

IX. RIGHT TO ENTER ONE'S OWN COUNTRY

49. On 15 June 1988 the Greek Parliament was expected to repeal a controversial law which stripped non-ethnic Greeks of their citizenship. The Parliament voted to abolish the infamous article 19 of the Greek citizenship law, which was used as a means of revoking the citizenship of members of the 150,000-strong Turkish minority in Greece's Western Thrace region. It stipulated that Greek citizens not of Greek extraction who leave Greece with the intention of permanently settling abroad, or whom the Greek authorities decide left with such an intention, should be stripped of Greek citizenship. The European Union and human rights organizations were putting pressure on the Government to change the law. Under the 43-year-old article, some 7,000 Turks have been stripped of their citizenship over the last 15 years. All of them had made a trip to Turkey.[46]

X. RIGHT TO OWN PROPERTY

50. Hungary currently maintains a law which bars foreign nationals or businesses from buying land.[47]

51. Steven Herman, a United States citizen, filed a damage suit against the Asahi Bank in Japan claiming that the bank's refusal to extend him a housing loan on grounds that he is a foreign national without permanent residence status in Japan is unconstitutional. He claimed that his dignity was undermined because he was denied the loan due to his race and nationality.[48]

52. A new law in Kazakhstan significantly restricts private land ownership. Private individuals may own plots for family farming, gardening or building country homes. This right does not apply to foreigners or non-citizens.[49]

53. New Zealand's 1973 Overseas Investment Act has been amended so that future applications for foreign investment in farmland would only be approved where it would result in "substantial and identifiable benefits" to New Zealand, said New Zealand's Treasurer, Winston Peters. "The Government also intends to give favourable treatment to overseas buyers of farmland who hold permanent resident status", he said. Amendments to the law also reduced the area of shore land, the sale of which requires Overseas Investment Commission approval from 0.4 hectares to 0.2 hectares.[50]

XI. RIGHT TO PARTICIPATE IN THE POLITICAL PROCESS

54. In light of the October 2000 election, the Government of the United Republic of Tanzania, wary of infiltration by foreigners into top strategic positions in the army, Government and politics, has embarked on a discreet campaign to identify non-Tanzanians and weed them out. The former Ministers of Defence, Industries and Commerce, and Foreign Affairs, and the former Land and Urban Development, Natural Resources and Tourism Ministers all had to fight battles in court to prove and maintain their citizenship.[51]

55. Korean President Kim has pushed the issue of voting rights for Korean permanent residents living in Japan. Long before Kim raised the issue, Korean residents' associations, foreigners' rights groups and civil libertarians in Japan have fought to give permanent foreign residents voting rights in local elections. The idea comes from Europe where many nations give permanent foreign residents the right to vote in local elections. Japanese Prime Minister Mori has come out in favour of the idea, which indicates how far the idea has come as a result of President Kim's prodding. But there are problems: fairness and reciprocity. Also, the permanent residency that Japan offers is more stable than the permanent residency that Korea offers to Chinese residents with Taiwanese (Republic of China) citizenship. Harsh restrictions on business activities of Chinese permanent residents in the past, for example, forced many of them to leave Korea. In every other category of visa status, Korea is more restrictive than Japan.[52]

XII. RIGHT TO SOCIAL SECURITY

56. The Center for Migration Studies in Canada released a paper noting how efforts to single out immigrant children for the restoration of benefits such as food stamps may fall short of the intended objectives because most children of immigrants are already citizens who never lost their eligibility for benefits in the first place. These benefits restorations may also fall wide of the mark because the citizen children may still suffer the effects of their parents' reduced eligibility.[53]

XIII. FREE CHOICE OF EMPLOYMENT

57. A British medical exam set by the United Examining Board, a committee of doctors and university academics, was the primary test foreign-trained asylum-seeker and refugee doctors could take to get certified within the United Kingdom. As of May 1998, this exam was under fire by the Professional and Linguistic Assessment Board (PLAB). PLAB claimed that the exam did not properly assess foreign-born doctors' skills and recommended to the British General Medical Council that the test be abolished.[54]

XIV. RIGHT TO HOUSING

58. Two media-related businesses have set up a housing service in Tokyo to help foreign nationals overcome the "blatant discrimination" practised by some Japanese landlords. The service is run by New Com, a Shinjuku Ward-based publisher of foreign language newspapers, and the Ethnic Media Press Centre, a non-profit organization of such newspapers. "Discrimination toward foreign nationals in their searches for homes continues to be one of the

biggest problems", said Hideki Saito, head of the Press Centre. Organizers of the service said they hope to eradicate the racism that prevents foreigners, particularly non-Westerners, from renting apartments since there are currently no laws in Japan that ban discrimination.[55]

XV. RIGHT TO EDUCATION

59. A report released by the Irish National Teachers Organization (INTO) in 1998 found that there was no support for the educational needs of asylum-seekers' children from the Department of Education and Science or any other government agency. It notes that five teachers in the Department of Education's Refugee Support Services work with over 70 children in Dublin, which means that most children of refugees and asylum-seekers do not receive support. INTO also considers it "totally unacceptable" that refugee support teachers are "forced to discriminate" between children whose families have officially recognized refugee status and other ethnic minority and asylum-seekers' children "who have the same needs and may sometimes be in the same school".[56]

XVI. RIGHT TO HEALTH CARE

60. A Canada-based NGO, the Inter-Church Committee for Refugees (ICCR), has reported that babies born to non-citizens in some parts of Canada have been denied health coverage, and there have been deportations and efforts to deport non-citizens in the face of requests by international human rights bodies not to do so. ICCR also reported that refugees have been threatened with deportation in circumstances that fall outside of international standards.[57]

61. A study in the *American Journal of Public Health* claims that 51 per cent of full-time non-citizen workers lack health insurance. The study also shows that country origin makes a big difference in insurance coverage for immigrants. Immigrants are more likely to be insured if they are from countries like Canada, Cuba, Russia and other European nations. Over 50 per cent of all immigrants from Mexico and Central America did not have health insurance; 43.6 per cent of non-citizen immigrants are uninsured, compared with 18.5 per cent of immigrants who have become United States citizens.[58]

62. The district attorney in Houston, Texas, threatened to prosecute the Harris County Hospital District for providing preventive care to undocumented immigrants. Attorney-General John Cornyn stated that a provision of federal welfare reform legislation, called the Personal Responsibility and Work Opportunity Act of 1996, bars the use of public funds to provide free health care for illegal immigrants. District spokeswoman Dinah Massei said about 25 per cent of the public system's patients are undocumented aliens.[59]

63. An amendment to the Constitution of Texas passed in 1999 says that hospitals have "full responsibility for providing medical and hospital care to needy inhabitants of the county". Harris County attorneys say that provision mandates the treatment of undocumented illegal immigrants because of the textual use of the word "inhabitant". Immigrants, regardless of their legal status, clearly inhabit various parts of the state.[60]

64. The Sabah Health Department in Malaysia may hand over immigrants without valid personal identification documents to the police or Immigration Department as soon as they have received medical treatment at government hospitals. Director Saimy Ismail said the move was necessary to overcome the problems of congestion especially in hospitals in major towns. He also stated that based on last year's statistics, about 12 to 15 per cent of the patients at governmental hospitals were illegal immigrants while the figures for outpatients showed that they formed 25 per cent of the total.[61]

65. Under Austrian federal law, the Austrian provinces can require people not living in the country to pay higher hospital charges than Austrian citizens.[62]

66. A decision taken in July 2000 by the Health and Welfare Ministry in Greece to deny undocumented migrants access to medical treatment at State hospitals across the country came under fire by the Association of Hospital Doctors of Athens and Piraeus (EINAP). In a statement, the 8,500-member body characterized the Ministry's decision as "racist" and demanded that it be "immediately repealed". "We refuse to play this game", EINAP President Stathis Tsoukalos told the *Athens News*. "We will not request migrants' documents before we treat them and we will not call the police to report a migrant who is in need of medical assistance", Tsoukalos said.[63]

XVII. RIGHT TO PARTICIPATE IN THE CULTURAL LIFE OF THE COMMUNITY

67. In March 1999, 48 naturalization applications in a blue-collar suburb of the Swiss city of Lucerne were denied in a popular vote. All those turned down were Turks or people from the former Yugoslavia. Swiss law gives foreigners who meet the residency requirements and have no criminal record the right to apply for Swiss nationality as long as they are integrated into Swiss society. What it means to be integrated into Swiss society has been called into question. The lack of clear guidelines allows room for racist selection of naturalization requests. Swiss human rights groups have banded together to push for laws giving asylum-seekers full social and economic rights, and to get the employment ban on them repealed.[64]

XVIII. ANTI-TERRORISM MEASURES

68. The terrorist attacks on New York and Washington, D.C., of 11 September 2001 have led Governments around the world to adopt new measures affecting the rights of non-citizens. The United States Government has proposed to establish military tribunals to try foreigners accused of terrorism; to track down and question thousands of immigrants who have entered the United States in recent years, mostly from Middle Eastern countries; and to monitor conversations between people in federal custody and their lawyers. A new attitude in Europe also seems to have taken hold as waves of arrests across Belgium, France, the Netherlands, Spain and the United Kingdom in the months following the terrorist acts in the United States have netted terrorist suspects and far more people, mostly Muslims, whose activities merely seemed suspicious.[65]

69. Some critics of the United States administration argue that non-citizens as well as citizens are entitled to due process, and that there is something un-American about depriving non-citizens of basic procedural protections. "The most troubling thing is the detentions", said Akhil Reed Amar, a professor at Yale University Law School. "Who are these thousand people and what are they being charged with?"[66]

70. Alan Brinkley, a historian at Columbia University, said "habeas corpus is gone, trial by jury is gone. This is one of the most extraordinary assaults on civil liberties, albeit not of citizens, in our history". Except for the internment of Japanese during the Second World War, the United States has never targeted citizens or non-citizens "in measures that would strip from them virtually all of the constitutional protections".[67]

71. The United States Department of State imposed more rigorous screening starting on 14 November 2001 for many Arab and Muslim men seeking visas, a step that has irritated foreign Governments and United States immigrant advocacy groups. The additional background check means that the applicants, from 25 countries, must wait as long as four extra weeks to obtain tourist, student, or business visas.[68]

72. On 15 November 2001, Attorney-General John Ashcroft said interviews with the 5,000 men, ages 18 to 33, who have come to the United States since the beginning of 2000 on student, tourist or work visas must be completed within a month.[69]

73. Britain, criticized by its European neighbours for being too easy on asylum-seekers and dissidents wanted for terror offences abroad, rushed ahead with emergency legislation allowing for their detention without trial for renewable six-month periods. The bill also empowered officials to jail uncooperative witnesses in terror investigations and to search and take into custody airline passengers who aroused suspicion.[70]

74. In Paris, marines and police officers patrolling the subway were given the right to intercept travellers and search their baggage without offering a reason.[71]

75. In Germany, the Government has reintroduced the practice of computer profiling, the search of both public and private records for patterns to help find suspects, which was last seen when the country was fighting its home-grown Red Army Faction terrorist in the 1970s.[72]

Notes

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